

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10720 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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THAKORE SITAJI MOHANJI

Versus

RABARI DHARMSINHBHAI TALJABHAI

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Appearance:

MR SK ZAVERI, SR ADVOCATE with MR MUKESH R SHAH  
for Petitioners

MR PK JANI for Respondent No. 1

SERVED BY DS for Respondent No. 2, 9,10,11

MR ANANT S DAVE for Respondent No. 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 06/09/96

ORAL JUDGEMENT

1. The petitioners in this Special Civil Application were elected as Members of the Managing Committee of Patan Agriculture Produce Marketing Committee from the Constituency of the Agriculturists dispensing agriculture credit in the market area on 5th January, 1994. The said election was challenged by the respondents No.1 and No.2

before the Director, Agriculture Marketing and Rural Finance, on the ground inter alia that the names of 160 voters were wrongly excluded from the final voters list, on account of which, the entire election is vitiated. The contentions prevailed with the Director and as such, the election was set aside by order dated 13.09.1994. The petitioners unsuccessfully carried the matter in revision before the State Government. The revision application was rejected by the order of the State Government dated 12.11.1995.

2. Section-11 of the Gujarat Agriculture Produce Market Act 1963 (hereinafter referred to as 'the Act of 1963') provides for the Constitution of the Market Committee. It consists of eight agriculturists elected by the Members of the Managing Committee of the Cooperative Societies, dispensing agriculture credit in the market area. Four members from the traders class, two representatives of the cooperative marketing societies, one member to be nominated by the Local Authorities etc. The term of the market committee is four years from the date of its first General Meeting. Part-II of Agriculture Market Rules, 1965 (hereinafter referred to as 'the Rules of 1965') provides for the procedure of election of market committee. Rule-4 provides that the Director shall fix the date of the election and publish the same. Rule-5 contemplates three separate lists of voters, one of the agriculturists u/s 11(i), second of the traders and the third of the members of the Managing Committee of the Cooperative Marketing Societies. Under Rule-6, a person whose name is entered in the voters list is qualified to cast vote. Rule-7 provides the procedure of preparation of voters list. Rule-8 provides for the publication of the provisional and final voters list. It will be convenient to reproduce the Rule-7 and Rule-8 as follows :

7. Preparation of list of voters for general election :

(1) Whenever a general election to market committee is to be held :-

(i) every cooperative society dispensing agricultural credit in the market area shall communicate the full names of the members of its managing committee together with the place of residence of each members;

(ii) the market committee shall communicate

the full names of the traders holding general licenses in the market area together with the place of or residence of each such traders; and

- (iii) every cooperative marketing society shall communicate the full names of the members of its managing committee together with the place of residence of each such members.

to the authorised officer before such date as the Director may by order fix in that behalf :

Provided that the date to be so fixed shall not be later than sixty days before the date of the general election.

- (2) The authorised officer shall within seven days from the date fixed under sub-rule (1) cause to be prepared the lists of voters as required by rule 5 on the basis of the information received under sub-rule (1) and, if necessary, after making such inquiry, as he may deem fit.

- (3) Every list of voters shall show the full name, place of residence and the serial number of each voter.

#### 8. Provisional and final publication of lists of voters :

- (1) As soon as a list of voters is prepared under rule 5, it shall be published by the authorised officer by affixing a copy thereof at the office of the market committee and at some conspicuous place in the principal market yard in the market area along with a notice stating that any person whose name is not entered in the list of voters and who claims that his name should be entered therein or any person who thinks that his name or the name of some other person has been wrongly entered therein or has not been correctly entered, may, within fourteen days from the date of the publication of the notice, apply to the authorised officer for an amendment of the list of voters.

- (2) If any application is received under sub-rule (1-A), the authorised officer shall

decide the same and shall cause to be prepared and published the final list of voters, after making such amendments therein as may be necessary in pursuance of the decision given by him on the application. The final list shall be prepared atleast thirty days before the date fixed for the nomination of candidates for the election.

3. The mechanism which emerges from reading of Rules 7 and 8 is that, the process of preparation of the voters list commences from sending of the names of the members of the managing committee of the every cooperative society dispensing with the agriculture credit to the authorised officer before such date as may be fixed by the Director. After receipt of the names, the authorised officer within seven days from the date fixed under sub-rule (1) prepares the list of voters and publish the same. This list is known as provisional voters list. For preparation of provisional list, the authorised officer is empowered to make brief enquiry. After preparation of the provisional voters list, the same is required to be published in the manner provided under Rule-8, inviting the objection, if any, within fourteen days. On the basis of objections received, a revised voters list is prepared and published, inviting objections within one week against amendment in

provisional voters list. If any objection is received , a decision thereon is taken and a final list is prepared atleast 30 days before the date fixed for election.

4. In the instant case, for the election scheduled to be held on 4th January 1994, the notification was issued on 28th September 1993. The provisional voters list was prepared and published. Objections against the inclusion of voters with respect to 19 cooperative societies were raised on the ground that they send the larger number of names of members of the cooperative society than fixed under the respective byelaws. The preliminary voters list contained the names of 742 voters. On consideration of objections, while the names of 14 persons were added, the names of 176 voters of 19 cooperative societies were deleted. Thus, it reduced the total number of voters to 580 voters. As the name of Morpa Mandali was wrongly included among 19 societies,

and the names of 9 members of the said Managing Committee were again included. This reduced the number of deleted vote to 167, (176 - 9 = 167). Thus, the position can be glanced as follows:-

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S.N.	Voters List	Date	No. of Voters		
			Added	Deleted	Total
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1.	Preliminary Voters List	15.10.93			742
2.	Revised draft Voters List	03.11.93	14 176	580	
3.	Final Voters List	22.11.93	09	09	589
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167*					

\*( 176 - 09 = 167 )

The elections took place on 4th January 1994 and the result was declared on 5th January 1994. Eight persons were elected. The last successful candidate i.e. the person at Srl.No.8 viz Patel Pravinkumar Prabhudas secured 317 votes. The name of Patel Bhogilal Ranchhoddas having secured 198 votes appeared at Srl.No.9. However, his appearance at Srl.No.9 is not of any significance for the reason that he has already been elected from other constituency. The name of election petitioners viz. Rabari Dharamsinh Taljabhai (respondent No.1) and Patel Khodidas Hemchandbhai (respondent No.2) appeared at Srl.No.10 and 11 having secured 165 and 162 votes respectively. Thus, the margin between the votes secured by the last successful candidate at Srl.No.8 and the first defeated candidate at Srl.No.10 securing the next highest number of votes is 152 votes. The position can be indicated as follows:-

S.N.	Name of the Candidate	Votes secured
01.	Prabhu Chailabhai Nathubhai	367
02.	....	
08.	Patel Pravinkumar Prabhudas	317
09.	Patel Bhogilal Ranchhodda	198** (Elected from other constituency)
10.	Rabari Dharamsinhbhai Taljabhai	165
11.	Patel Khodidas Hemchandbhai	162
12.	....	
13.	....	

5. The Director found that societies send names of more persons as members of the Managing Committee, than the prescribed under the Byelaws with a view to take advantage in the election and as such, names of all the members were deleted from voters list. Subsequently, the resignation of members excess in number were sent, but the Authorised Officer refused to include the names of any member to set an example, so that such societies may not indulge in malpractices in future. The Director expressed that the Authorised Officer ought to have deleted the names of only such members who had resigned and allowed the names of other members in the voters list, which were not in excess of number of members in Managing Committee. The Director held that 167 voters were wrongly deprived of their right to vote. Considering the fact the margin of votes between last elected and first defeated candidate was less than the total numbers of voters deprived, materially affected the election, and consequently the election was set aside. The findings were not interfered in revision by the State Government.

6. Mr S.K.Zaveri, Sr.Advocate contends that the Director committed an error in proceeding on the basis of total numbers of voters deleted from the voters list instead of proceeding on the basis of actual number of voters legally entitled to vote. He submits that all the 167 voters whose names were deleted were not entitled to

be included in the voters list. At the first instance, the objections were raised only by 12 societies and as such, there could be correction in the revised voters list with respect to the said societies only. On consideration of the said objection, only the names of 86 voters can said to have been wrongly excluded or if all the 18 cooperative societies are taken together, then also it can be said that the names of 128 voters were wrongly excluded. Thus, the contention of Mr Zaveri is that the Director should have taken the figure 128 instead of 167. If this figure is taken, then the margin of votes between the last elected and first defeated candidate i.e. 152 is more than the number of voters deleted. In such situation, it cannot be said that the election has materially affected. He further submits that it is not a matter of simple calculation, but further the onus is on the person challenging the election to establish by a positive and reliable evidence that the excluded votes would have gone his favour. He placed reliance on the decision of the Apex Court in the case of Shri Shivcharan Singh V/s Chandrabhan Singh and others reported in AIR 1988 SC 637. On the other hand, it is contended by Mr P.K.Jani, learned counsel appearing for the respondents that the principle laid down by the Apex Court in various decisions with respect to the marginal votes materially affecting the elections pertains to election under the Representations of Peoples Act which cannot be applied to the election of small body like the Agriculture Produce Market Committee. He further submits that there are only 40 cooperative societies with the agriculture credit, out of which, 18 cooperative societies have been excluded. Therefore, instead of taking the number of voters, it must be taken that about 50% of the societies have been deprived of right to vote.

7. The first question which arises for consideration is whether the Director was right in considering that 167 voters were deprived to cast their votes. It is not in dispute that, on publication of the preliminary voters list, it was pointed out that 19 societies have sent the names of more persons as members of the Managing Committee, than the prescribed under the byelaws. In view of this, the authorised officer deleted all the 176 members of the Managing Committee of the said 19 societies. The said societies thereafter sent the resignations of the members of the committees excess in number fixed under the byelaws. Among the 19 societies, it was found that the name of Morpa Gopalak Mandali was wrongly excluded and as such, the names of 9 members of the managing committee of the said society were

reinducted in the voters list or to say the names of the 9 persons were deleted from the figure 176 which made the figure 167. From the 18 cooperative societies, there could be only 128 voters, that being the outer number of members of the Managing Committee under the byelaws. It has been brought to my notice by learned A.G.P. that, out of 18 cooperative societies, the names of the members of the Managing Committee of Kansa Gopalak Vividh Karyakari Society were excluded as it was found by the Authorised Officer that the said society was not dispensing with Agriculture Credit. On exclusion of 7 members of the said society, there remained only 121 ( $128-7 = 121$ ) members of the Managing Committee, who were eligible to be included in the voters list, or to say, only 121 persons were entitled to vote from the list of voters, whose names were deleted. Thus, in my view, the Authorised Officer was wrong in deleting the names of 121 members who were eligible to cast votes. The Director, therefore, was in obvious error in proceeding on the assumption that 167 voters were deprived to cast their votes. This aspect has also not been properly appreciated by the State Government while deciding the revision.

8. It is evident from the aforesaid discussion that, the margin between the last elected candidate and the first defeated candidate is 152. On the other hand, the names of 121 voters were wrongly deleted from the voters list. Thus, the number of the voters wrongly deleted is less than the margin between the last elected candidate and the first defeated candidate or in other words, even if these votes would have gone to the first defeated candidate i.e. the respondent No.1 - Rabari Dharamsinghbhai, then also, he would have secured  $165 + 121 = 286$  votes, which is still less than the 317 votes secured by the last elected candidate. Thus, wrong deletion of names of the members from the voters list has not materially affected the election. Therefore, the findings and conclusion arrived at by the Director is ex-facie illegal and deserves to be quashed and set aside.

9. In view of the aforesaid, this Special Civil Application is allowed and the impugned order passed by the Director of Agriculture Marketing & Rural Finance dated 13/09/1994 and the order passed by the State Government dated 22/11/1995 are hereby quashed and set aside. The petitioners and the respondents No.3 to 8 are declared to be elected as Members of the Patan Agriculture Market Committee from the Agriculture Constituency. Rule made absolute. There shall be no



order as to costs.

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